

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SCOTT J. SWAIN and KENNY FIORITO,
on behalf of the ISCO Industries Inc.
Employee Stock Ownership Plan, and on
behalf of a class of all other persons similarly
situated,

Plaintiffs,

v.

WILMINGTON TRUST, N.A., as successor
to Wilmington Trust Retirement and
Institutional Services Company,

Defendant.

C.A. No. 17-071-RGA-MPT

**ORDER AMENDING ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT AND CERTIFICATION OF
SETTLEMENT CLASS AND
PROPOSED NOTICE OF SETTLEMENT *NUNC PRO TUNC***

WHEREAS, Plaintiffs Scott J. Swain and Kenny Fiorito, Individually and as Class Representatives ("Plaintiffs") moved, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Action and enclosed a Proposed Order therewith (D.I. 99-3) (the "Proposed Order");

WHEREAS, The Court entered the Proposed Order, granting Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class on January 21, 2020 (D.I. 104) (the "Order");

WHEREAS, The Proposed Order submitted by Plaintiffs contained a scrivener's error in paragraph 6, which stated that the Court was certifying the class, for settlement purposes, under Fed. R. Civ. P. 23(b)(3);

WHEREAS, consistent with Plaintiffs' motion for preliminary approval, the Proposed

Order should have stated that the Court was certifying the class, for settlement purpose, under Fed. R. Civ. P. 23(b)(1);

WHEREAS, Plaintiffs' counsel and Defendant Wilmington Trust's counsel have conferred and agreed to propose an amendment *nunc pro tunc*, to the Proposed Order, replacing paragraph 6 with language reflecting that Plaintiffs sought and the Court approved, for settlement purposes only, a class under Fed. R. Civ. P. 23(b)(1);

WHEREAS, Plaintiffs request that the Court direct the Clerk of the Court to enter a revised Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class *nunc pro tunc* (attached as Exhibit 1 hereto);

WHEREAS, Plaintiffs' counsel was advised by Wilmington Trust's counsel that it does not object to or oppose the motion or relief requested; and

THEREFORE, the Court directs the Clerk of the Court to enter the enclosed Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class *nunc pro tunc* effective January 21, 2020 (attached as Exhibit 1 hereto).

SO ORDERED this 28 day of May 2019.

/s/ Richard G. Andrews

United States District Judge